III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 June 2014

on a proposal for a Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions

(CON/2014/49)

(2014/C 336/04)

Introduction and legal basis

On 18 March 2014 and on 27 March 2014, the European Central Bank (ECB) received requests from the European Parliament and from the Council, respectively, for an opinion on a proposal for a Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions ([1]) (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union as the proposed regulation contains provisions affecting the contribution of the European System of Central Banks (ESCB) to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

The ECB broadly welcomes the proposed regulation, which is aimed at increasing the safety and transparency of the financial market, in line with recommendations issued by the Financial Stability Board (FSB) and endorsed in September 2013 by the G20 leaders ([2]). The proposed regulation introduces measures in three areas: (1) transaction details must be reported to trade repositories, and competent authorities and relevant Union bodies must have direct and immediate access to these details in order to facilitate monitoring of the build-up of systemic risks related to the use of securities financing transactions (SFTs), which for the purposes of the proposed regulation include repurchase transactions, securities or commodities lending and borrowing, and other transactions with equivalent economic effect and posing similar risks, in particular buy-sell back and sell-buy back transactions; (2) information on SFTs must be disclosed to the investors whose assets are employed in these transactions or in other financing structures that have effects equivalent to SFTs; and (3) there must be contractual transparency of rehypothecation activities. The ECB considers that the new uniform rules on reporting and transparency of SFTs, as well as the provisions on rehypothecation, may play an important role in enhancing financial stability in the Union. Moreover, the proposed regulation should consider the work of the FSB data experts group on securities financing markets, which was established to take forward recommendations on data collection and aggregation at the global level in accordance with the FSB Recommendations, and which will develop proposed standards and processes by the end of 2014 ([3]). In addition, the ECB makes the following specific comments.

([1]) COM(2014) 40 final.

([2]) See 'Strengthening Oversight and Regulation of Shadow Banking: Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos' (hereinafter the 'FSB Recommendations'), 29 August 2013, available on the FSB's website at http://www.financialstabilityboard.org/

([3]) See Recommendations 2 and 3 of the FSB Recommendations.

2. **Specific observations**

2.1 *Exemption for central bank transactions from reporting and transparency obligations*

The proposed reporting and transparency framework does not provide an exemption with regard to transactions to which an ESCB central bank is a counterparty ([1]).

The ECB notes in this respect that, whilst the reporting and transparency of transactions performed by central banks as part of their respective statutory objectives and tasks would not achieve greater transparency for the market, the effectiveness of these operations, namely in the field of monetary policy or foreign exchange operations, and consequently the performance by the central banks of these tasks, which relies on timeliness and confidentiality, could be severely compromised by reporting or transparency of information on such transactions.

Requiring the counterparties to transactions, to which a member of the ESCB is a party, to report all related details to trade repositories may interfere with the confidentiality regimes of the ECB and national central banks (NCBs) and defeat the purpose of the immunities granted to the ECB under the Treaty, in particular the inviolability of the ECB's archives and official communications ([2]). For these reasons, SFTs to which an ESCB central bank is counterparty should be exempt from the reporting and transparency obligations.

The ECB would strongly recommend including a transaction-based exemption in the proposed regulation ([3]). Failure to include such an exemption would have the same effect as imposing such reporting and transparency obligations on the ESCB itself.

2.2 *Clarification of the Commission's power to amend the list of exemptions*

In addition, it is necessary to clarify Article 2(3) of the proposed regulation, which gives the Commission power to amend the list of exemptions under Article 2(2) by means of a delegated act. The ECB considers that Article 2(3) should contain a direct reference to the possibility of extending the list of exemptions to include central banks of third countries ([4]).

2.3 *Rehypothecation*

For the purposes of the proposed regulation, rehypothecation means 'the use by a receiving counterparty of financial instruments received as collateral in its own name and for its own account or for the account of another counterparty' ([5]). The proposed regulation provides that a counterparty receiving financial instruments as collateral will be allowed to rehypothecate them only with the express consent of the providing counterparty and only after the collateral has been transferred to its own account ([6]).

The ECB welcomes the reporting obligations for SFTs under Article 4, including the obligation to report details of collateral provided, in particular where it is available for rehypothecation or if it has been rehypothecated. Moreover, the ECB welcomes the contractual transparency requirements under Article 15 of the proposed regulation. However, in order to ensure consistency, the ECB proposes aligning the terminology under the proposed regulation as far as possible with the FSB Recommendations ([7]), and thus applying the term 'reuse' instead of 'rehypothecation', which better reflects the broad scope of transactions covered by the proposed regulation and will provide legal certainty to market participants. The ECB provides drafting suggestions for that purpose ([8]).

([1]) Article 2(2) of the proposed regulation only provides a subjective exemption for the members of the ESCB, other Member States' bodies performing similar functions, other Union bodies charged with or intervening in the management of public debt and the Bank for International Settlements. Counterparties of ESCB central banks' transactions are not clearly exempt from the reporting and transparency obligations under Articles 4, 13, 14 and 15 of the proposed regulation.

([2]) See Article 343 of the Treaty and Article 39 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') as well as Articles 2, 5 and 22 of the Protocol on the Privileges and Immunities of the European Union.

([3]) See Amendment 7 in the Annex to this Opinion. Cf. paragraph 7.2 of Opinion CON/2012/21 and Article 1(6) to (8) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84). All ECB opinions are published on the ECB's website at www.ecb.europa.eu

([4]) See Amendment 8 in the Annex to this Opinion. This clarification would be consistent with Article 1(6) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1) and Article 1(9) of Regulation (EU) No 600/2014.

([5]) Article 3(7) of the proposed regulation.

([6]) Article 15 of the proposed regulation.

([7]) See Recommendation 7 of the FSB Recommendations.

([8]) See Amendment 10 in the Annex to this Opinion. See also Amendments 2 to 6, 11 and 16.

With regard to contractual transparency requirements, the proposed regulation does not make a distinction between financial collateral transferred under a 'title transfer financial collateral arrangement' and provided under a 'security financial collateral arrangement' within the meaning of Directive 2002/47/EC ([1]). Under the title transfer financial collateral arrangement, the collateral provider transfers full ownership of, or full entitlement to, financial collateral to a collateral taker. By contrast under the security financial collateral arrangement the collateral provider provides financial collateral by way of security to or in favour of a collateral taker, and thus the full or qualified ownership of, or full entitlement to, the financial collateral remains with the collateral provider when the security right is established. From a financial stability perspective, the wide scope of the proposed regulation should, in principle, be welcomed. However, bearing in mind the provisions of Directive 2002/47/EC, a collateral taker should not be restricted from enjoying full ownership or full entitlement to the financial collateral, once a title transfer financial collateral arrangement has been entered into. While the receiving counterparty should nevertheless be obliged to comply with the other requirements under Article 15 of the proposed regulation, it should be clarified that entering into a title transfer financial collateral arrangement already implies a consent to reuse and that any breach of requirements under Article 15 will not affect the validity or enforceability of the SFT, and the receiving counterparty could only be subject to administrative sanctions under the proposed regulation. The ECB provides drafting suggestions for that purpose ([2]).

The ECB notes that the proposed regulation focuses only on introducing reporting and transparency requirements. However, the recent financial crisis has shown that significant financial stability risks may arise from the practices of reuse and rehypothecation of client assets: they may increase contagion risk, potentially lead to the build-up of excessive leverage in the financial system and may also increase the risk of runs on individual institutions. In this context, it is noted that recommendations have been made at international level by the FSB to introduce limits as regards: (1) the rehypothecation of client assets for the purpose of financing the intermediary's own-account activities; and (2) the entities allowed to engage in the rehypothecation of client assets ([3]). Moreover, further measures may also be warranted in the Union. Therefore, the ECB considers that it is important for the Commission to assess the need for further regulatory measures, which go beyond the proposed reporting and transparency requirements, including quantitative limits on reuse and on rehypothecation of client assets, which could be implemented in a future legal act. A thorough cost-benefit analysis should be conducted to ensure such quantitative limits do not have an adverse impact on securities financing markets.

2.4 *Modalities for the reporting of data on SFTs*

In order to perform ESCB tasks and to monitor the financial markets and financial activities within the euro area and the Union as a whole, the ECB, assisted by the NCBs, needs to collect high quality statistical information ([4]). Therefore, the transaction details reported to trade repositories and, in certain circumstances, to the European Securities and Markets Authority (ESMA) under the proposed regulation are vital for the ESCB to fulfil its tasks: (1) to contribute to the stability of the financial system in accordance with Article 127(5) of the Treaty by monitoring the build-up of systemic risks related to SFTs; (2) to implement monetary policy; (3) to analyse the monetary policy transmission mechanism; (4) to conduct oversight of financial market infrastructures ([5]); and (5) to provide analytical and statistical support to the European Systemic Risk Board (ESRB) in accordance with Regulation (EU) No 1096/2010 ([6]).

For these reasons, and in order to minimise the reporting burden on financial market participants, the details on the specific types of SFTs that must be reported and the format and frequency of those reports should facilitate the use of such information for the ESCB's tasks. The ECB welcomes the opportunity to cooperate closely with ESMA to develop draft technical standards and stands ready to support ESMA in its task.

Moreover, the ECB recommends that the SFT details should be reported, compiled and made accessible to the ESCB with the maximum degree of granularity and in a fully standardised form. With regard to the data items to be reported, the ECB recommends that the technical standards prepared under Article 4(7) of the proposed regulation

([1]) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).
([2]) See Amendments 10 and 19 in the Annex to this Opinion.
([3]) See Recommendation 7 of the FSB Recommendations.
([4]) Article 5 of the Statute of the ESCB.
([5]) See Opinion CON/2011/1.
([6]) Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board (OJ L 331, 15.12.2010, p. 162).

require details of the individual assets being used as collateral and the principal amount, currency, type, quality and value of each asset to be reported. This will help to determine the assets that are available for rehypothecation or have been rehypothecated, and will facilitate automatic procedures to compile such information. The technical standards should also allow reporting of individual assets subject to securities or commodities lending or borrowing. Individual assets should also be reported where transactions are collateralised by pools of assets, for example on a portfolio basis or via triparty collateral management services ([1]). The technical standards should take into account the technical specificities of such pools of assets and their dynamic nature, particularly where the composition of the pool changes frequently. The manner in which individual assets are reported should be adjusted accordingly. For example, one option to ease reporting of triparty repurchase transactions could be to allow for the reporting of the end-of-day individual assets composition of the collateral pool securing the transactions. Reporting via the relevant financial market infrastructures may facilitate the technical feasibility of reporting (including of individual collateral assets details) and would be consistent with Article 4(1) of the proposed regulation, which permits counterparties to delegate the reporting of SFTs.

In addition, the ECB suggests that the technical standards should require counterparties to report additional items to facilitate more comprehensive monitoring for financial stability purposes and for the fulfilment of the ESCB tasks outlined above, taking into account, inter alia, international developments such as the ongoing work of the FSB.

The proposed regulation requires details of the SFT to be reported no later than the working day following the conclusion, modification or termination of the transaction. In order to ensure the quality of data, and to ensure that all details are correct and complete, the ECB recommends examining whether requirements for additional, less frequent reporting of all transactions which have not yet matured should be imposed on counterparties. Such additional reporting requirements would be aimed at mitigating the accumulation, over time, of errors in the details of SFTs reported and would be in line with the FSB's recommendation to collect regular snapshots of outstanding balances ([2]).

The ECB strongly recommends that technical standards under the proposed regulation require the reported data to include appropriate identifiers by using current and forthcoming internationally agreed standards. ESMA should make the use of such identifiers obligatory for all counterparties which fall within the scope of the proposed regulation, in particular, the international securities identification number (ISIN), the global legal entity identifier (LEI) and a unique trade identifier ([3]).

First, the ISIN, which is assigned to securities and uniquely identifies a securities issue, should be referred to when non-cash collateral instruments are reported.

Second, to ensure consistency and to provide a tool for appropriate data compilation, all parties to financial transactions should be identified by a unique code. For that purpose, the ECB supports the use of the global LEI system, as endorsed by the European Banking Authority (EBA) and ESMA ([4]), in a manner which is compatible with the FSB Recommendations ([5]). Although the global LEI system is not yet fully operational, Article 4(8) of the proposed regulation should refer to the need to apply LEIs in the technical standards, particularly in light of the use of pre-LEIs under the interim global LEI system, which is currently operational ([6]). The use of the LEI or pre-LEI system will facilitate data collection and aggregation at the global level, in particular to correct double counting for international transactions reported in different jurisdictions.

([1]) See Amendment 11 in the Annex to this Opinion.
([2]) See Recommendation 2 of the FSB Recommendations.
([3]) See Amendment 12 in the Annex to this Opinion.
([4]) See EBA Recommendation on the use of the Legal Entity Identifier (LEI) (EBA/REC/2014/01), 29 January 2014, available on the EBA's website at http://www.eba.europa.eu/, and ESMA Questions and Answers document, 'Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)' (ESMA/2013/1527), 22 October 2013, p. 45, available on ESMA's website at http://www.esma.europa.eu/
([5]) See 'A Global Legal Entity Identifier for Financial Markets', 8 June 2012, available on the FSB's website at http://www.financialstabilityboard.org/
([6]) See 'LEI Regulatory Oversight Committee (ROC): 1st progress note on the Global LEI Initiative', 8 March 2013, available on the LEI ROC's website at http://www.leiroc.org/. The Interim Global LEI System was launched in January 2013, whereby the LEI ROC accepted as globally compatible any pre-LEI issued by a pre-LOU (Local Operating Unit).

Third, the ECB strongly recommends the development by ESMA of a unique trade identifier at European level, in the absence of an agreed framework at international level. This is particularly important in order to match information on the same transaction reported by two or more counterparties as well as a necessary condition to ensure the integrity of the information provided by a counterparty, for example, to avoid gaps and double counting.

It is also important to ensure that the ESCB has proper access to complete, fully standardised, granular information collected by trade repositories in formats that facilitate the exercise of ESCB tasks [1]. Where ESMA considers it necessary and appropriate, it should have the possibility to include, in the draft technical standards, procedures for trade repositories to verify the completeness and correctness of the data reported to them, in particular where the trade repository detects missing, incomplete or inconsistent information [2]. This is without prejudice to the powers of competent authorities to impose administrative sanctions and measures on counterparties in accordance with Chapter VIII of the proposed regulation.

Following the adoption of these technical standards in accordance with the procedure in Regulation (EU) No 1095/2010 [3], it is important that they are periodically updated in order to adequately reflect market developments, to enhance the regulatory framework and to give full effect to the European Single Rulebook.

Technical standards adopted under other Union financial services legislation, such as Regulation (EU) No 648/2012, may also need to be aligned with the technical standards adopted under the proposed regulation. This will help to reduce the reporting burden on counterparties, while ensuring that such reports effectively contain the details required under Article 4 of the proposed regulation. Such alignment should seek to ensure comprehensive monitoring of SFTs, in particular the consistency of the details and formats of SFTs reported in accordance with Article 4(6) of the proposed regulation.

Done at Frankfurt am Main, 24 June 2014.

The President of the ECB

Mario DRAGHI

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[1] See Amendment 15 in the Annex to this Opinion.

[2] See Amendment 13 in the Annex to this Opinion.

[3] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 1 Recital 9	
'As a result, information on the risks inherent in securities financing markets will be centrally stored and easily and directly accessible, among others, to the European Securities and Markets Authority ("ESMA"), the European Banking Authority ("EBA"), the European Insurance and Occupational Pensions Authority ("EIOPA"), the relevant competent authorities, the ESRB and the relevant central banks of the European System of Central Banks ("ESCB"), including the European Central Bank ("ECB"), for the purpose of identification and monitoring of financial stability risks entailed by shadow banking activities of regulated and non-regulated entities. ESMA should consider the existing standards established by Article 9 of Regulation (EU) No 648/2012 and regulating trade repositories for derivative contracts and their future developments when drawing up or proposing to revise the regulatory technical standards provided for in this Regulation and aim to ensure that the relevant competent authorities, the ESRB and the relevant central banks of the ESCB, including the ECB, have direct and immediate access to all the information necessary to perform their duties.'	'As a result, information on the risks inherent in securities financing markets will be centrally stored and easily and directly accessible, among others, to the European Securities and Markets Authority ("ESMA"), the European Banking Authority ("EBA"), the European Insurance and Occupational Pensions Authority ("EIOPA"), the relevant competent authorities, the ESRB and the relevant central banks of the European System of Central Banks ("ESCB"), including the European Central Bank ("ECB"), for the purpose of identification and monitoring of financial stability risks entailed by shadow banking activities of regulated and non-regulated entities. ESMA should consider the existing standards established by Article 9 of Regulation (EU) No 648/2012 and regulating trade repositories for derivative contracts and their future developments when drawing up or proposing to revise the regulatory technical standards provided for in this Regulation and aim to ensure that the relevant competent authorities, the ESRB and the relevant central banks of the ESCB, including the ECB, have direct and immediate access to all the information necessary to perform their duties**, including the duties to define and implement monetary policy and to conduct oversight of financial market infrastructures**.'
Explanation	
The transaction details reported to trade repositories and, in certain circumstances, to ESMA are vital for the ESCB to fulfil its tasks. The use of these details for that purpose should be reflected in the text of the proposed regulation. See paragraph 2.4 of this Opinion.	
Amendment 2 Recital 17	
'Re-hypothecation provides liquidity and enables counterparties reducing funding costs. However, it creates complex collateral chains between traditional banking and shadow banking, posing financial stability risks. The lack of transparency on the extent to which financial instruments provided as collateral have been re-hypothecated and the respective risks in case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability.'	'~~Re-hypothecation~~ **Reuse** provides liquidity and enables counterparties **to reduce** ~~reducing~~ funding costs. However, it creates complex collateral chains between traditional banking and shadow banking, posing financial stability risks. The lack of transparency on the extent to which financial instruments provided as collateral have been ~~re-hypothecated~~ **reused** and the respective risks in case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability.'
Explanation	
This amendment seeks to ensure consistency with the introduction of the term 'reuse' to the proposed regulation. See Amendment 10 and paragraph 2.3 of this Opinion.	

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 3

Recital 18

'This Regulation establishes information rules towards counterparties on re-hypothecation which should not prejudice the application of sectorial rules adapted to specific actors, structures and situations. Therefore, the rules on re-hypothecation provided for in this Regulation should apply, for example, to funds and depositories only insofar as there are no more stringent rules on re-use foreseen within the framework for investment funds constituting a lex specialis and taking precedence over the rules contained in this Regulation. In particular, this Regulation should be without prejudice to any rule restricting the ability of counterparties to engage in re-hypothecation of financial instruments that are provided as collateral by counterparties or persons other than counterparties.'	'This Regulation establishes information rules towards counterparties on ~~re-hypothecation~~ **reuse** which should not prejudice the application of sectorial rules adapted to specific actors, structures and situations. Therefore, the rules on ~~re-hypothecation~~ **reuse** provided for in this Regulation should apply, for example, to funds and depositories only insofar as there are no more stringent rules on re-use foreseen within the framework for investment funds constituting a lex specialis and taking precedence over the rules contained in this Regulation. In particular, this Regulation should be without prejudice to any rule restricting the ability of counterparties to engage in ~~re-hypothecation~~ **reuse** of financial instruments that are provided as collateral by counterparties or persons other than counterparties. **The definition of the term "reuse" under this Regulation seeks to provide alignment with the FSB Recommendations. The definition of reuse encompasses the concept of rehypothecation under the FSB Recommendations, without prejudice to the need to define this term for the purposes of future EU legislative initiatives.**'

Explanation

This amendment seeks to ensure consistency with the introduction of the term 'reuse' to the proposed regulation. See Amendment 10 and paragraph 2.3 of this Opinion.

Amendment 4

Recital 24

'In accordance with the principle of proportionality, it is necessary and appropriate to ensure the transparency of certain market activities such as SFTs, rehypothecation and, where appropriate, other financing structures and to enable the monitoring and identification of the corresponding risks to financial stability. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on the European Union.'	'In accordance with the principle of proportionality, it is necessary and appropriate to ensure the transparency of certain market activities such as SFTs, ~~rehypothecation~~ **reuse** and, where appropriate, other financing structures and to enable the monitoring and identification of the corresponding risks to financial stability. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on the European Union.'

Explanation

This amendment seeks to ensure consistency with the introduction of the term 'reuse' to the proposed regulation. See Amendment 10 and paragraph 2.3 of this Opinion.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 5

Article 1

'This Regulation lays down rules on the transparency of securities financing transactions (SFTs), other financing structures and rehypothecation.'	'This Regulation lays down rules on the transparency of securities financing transactions (SFTs), other financing structures and ~~rehypothecation~~ **reuse**.'

Explanation

This amendment seeks to ensure consistency with the introduction of the term 'reuse' to the proposed regulation. See Amendment 10 and paragraph 2.3 of this Opinion.

Amendment 6

Article 2(1)(d)

'(d) a counterparty engaging in rehypothecation that is established: (1) in the Union, including all its branches irrespective of where they are located; (2) in a third country, in either of the following cases: (i) the rehypothecation is effected in the course of the operations of an EU branch; (ii) the rehypothecation concerns financial instruments provided as collateral by a counterparty established in the Union or an EU branch of a counterparty established in a third country.'	'(d) a counterparty engaging in ~~rehypothecation~~ **reuse** that is established: (1) in the Union, including all its branches irrespective of where they are located; (2) in a third country, in either of the following cases: (i) the ~~rehypothecation~~ **reuse** is effected in the course of the operations of an EU branch; (ii) the ~~rehypothecation~~ **reuse** concerns financial instruments provided as collateral by a counterparty established in the Union or an EU branch of a counterparty established in a third country.'

Explanation

This amendment seeks to ensure consistency with the introduction of the term 'reuse' to the proposed regulation. See Amendment 10 and paragraph 2.3 of this Opinion.

Amendment 7

Article 2(2a)

No text.	'**This Regulation shall not apply to transactions to which the bodies listed in paragraph 2 are counterparty.**'

Explanation

The subjective exemption of the members of the ESCB from the application of the proposed regulation is not sufficient to ensure that transactions to which ESCB members are counterparty are also exempt from the reporting and transparency obligations. Therefore this new subparagraph is necessary. See paragraph 2.1 of this Opinion.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 8

Article 2(3)

'The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend the list set out in paragraph 2 of this Article.'	'The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend the list set out in paragraph 2 of this Article **and in particular to extend the scope of paragraph 2 to central banks of third countries.** **To that end, by [12 months after the publication of this regulation] the Commission shall present to the European Parliament and the Council a report assessing the treatment under this Regulation of transactions by third-country central banks, which shall:** **(a) identify provisions applicable in the relevant third countries regarding the regulatory disclosure of central bank transactions, including transactions undertaken by members of the ESCB in those third countries, and** **(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.** **If the report concludes that the exemption provided for in paragraph 2 is necessary in respect of transactions where the counterparty is a third-country central bank carrying out monetary policy, foreign exchange and financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank.**'

Explanation

This drafting proposal aims to ensure consistency with Article 1(9) of Regulation (EU) No 600/2014. See paragraph 2.2 of this Opinion.

Amendment 9

Article 3(6) third indent

'"securities financing transaction (SFT)" means: […] — any transaction having an equivalent economic effect and posing similar risks, in particular a buy-sell back or sell-back transaction;'	'"securities financing transaction (SFT)" means: […] — any transaction having an equivalent economic effect and posing similar risks, in particular a buy-sell back or sell-**buy** back transaction **or collateral swap transaction**;'

Explanation

The definition of SFTs should be extended to cover other transfers of collateral between counterparties. This facilitates the reporting and monitoring of such transactions in accordance with Article 4 of the proposed regulation, which is important from a macro-prudential perspective, as such transactions can contribute to the build-up of systemic risk.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 10

Article 3(7)

'"rehypothecation" means the use by a receiving counterparty of financial instruments received as collateral in its own name and for its own account or for the account of another counterparty;'	'"~~rehypothecation~~ **reuse**" means the use by a receiving counterparty of financial instruments received as collateral in its own name and for its own account or for the account of another counterparty;'

Explanation

This drafting proposal seeks to reflect that this broad definition is consistent with the term 'reuse' under the FSB Recommendations. See paragraph 2.3 of this Opinion.

Amendment 11

Article 4(7)

'In order to ensure consistent application of this Article, ESMA, in close cooperation with the European System of Central Banks (ESCB) and taking into account its needs, shall develop draft regulatory technical standards specifying the details for the different types of SFTs that shall specify at least:	'In order to ensure consistent application of this Article, ESMA, in close cooperation with the European System of Central Banks (ESCB) and taking into account its needs, shall develop draft regulatory technical standards specifying the details for the different types of SFTs that shall specify at least:
(a) the parties to the SFT and, where different, the beneficiary of the rights and obligations arising from it;	(a) the parties to the SFT and, where different, the beneficiary of the rights and obligations arising from it;
	(b) the individual assets being used as collateral or subject to securities or commodities lending or borrowing, including, as appropriate, individual assets where transactions are collateralised by pools of assets. The technical standards should take into account the technical specificities of pools of assets in order to facilitate reporting;
(b) the principal amount, currency, type, quality and value of collateral, the method used to provide collateral, where it is available for rehypothecation, if it has been rehypothecated, any substitution of the collateral, the repurchase rate or lending fee, counterparty, haircut, value date, maturity date and first callable date.	~~(b)~~**(c)** the principal amount, currency, type, quality and value of **the individual assets being used as** collateral, the method used to provide collateral, where it is available for ~~rehypothecation~~ **reuse**, if it has been ~~rehypothecated~~ **reused**, any substitution of the collateral, the repurchase rate or lending fee, counterparty, haircut, value date, maturity date and first callable date**, and market segment**. **The technical standards should take into account the technical specificities of pools of assets in order to facilitate reporting.**
	In developing these technical standards, ESMA shall take into account internationally agreed developments and standards.
ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].	ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'

Text proposed by the Commission	Amendments proposed by the ECB [1]

Explanation

In order to ensure a sufficient level of standardisation and to facilitate the use of such information for the ESCB's tasks, it is necessary to clearly set out the details for the different types of SFTs which must be reported to trade repositories, taking into account internationally agreed developments and standards. The technical standards should ensure comprehensive reporting of collateral, including details of individual assets, where transactions are collateralised by pools of assets, such as, for example, on a portfolio basis or via triparty collateral management services. The technical standards should take into account the technical specificities of such pools of assets and their dynamic nature, adjusting the reporting requirements accordingly. See paragraph 2.4 of this Opinion.

Amendment 12

Article 4(8)

'In order to ensure uniform conditions of application of paragraph 1, ESMA shall, in close cooperation with the ESCB and taking into account its needs, develop draft implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 3 for the different types of SFTs;	'In order to ensure uniform conditions of application of paragraph 1, ESMA shall, in close cooperation with the ESCB and taking into account its needs, develop draft implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 3 for the different types of SFTs;
ESMA shall submit those draft implementing technical standards to the Commission by [12 months after the publication of this Regulation].	**In developing these technical standards, ESMA shall take into account internationally agreed developments and standards. In particular the format of the reports should include, inter alia, the following international standards or other equivalent standards developed over time:**
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'	**(a) global legal entity identifiers (LEIs) or, on an interim basis, pre-LEIs;**
	(b) international securities identification numbers (ISINs);
	(c) a unique trade identifier for each transaction.
	ESMA shall, in close cooperation with the ESCB and in consultation with market participants, determine the conditions upon which unique trade identifiers are developed, attributed and maintained, where necessary taking into account international developments.
	ESMA shall submit those draft implementing technical standards to the Commission by [12 months after the publication of this Regulation].
	Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

Explanation

In order to ensure a sufficient level of standardisation and to facilitate the use of such information for the ESCB's tasks, it is necessary to clearly specify a number of aspects of the content and format of the reports to trade repositories, taking into account international identifiers, such as global LEIs and ISINs in order to ensure the competent authorities receive transaction details with the necessary data attributes and in appropriate transmission formats. Moreover, ESMA should be given the task to develop a unique trade identifier at European level, in the absence of an agreed framework at international level. See paragraph 2.4 of this Opinion.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 13

Article 5(6)

'ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 4. ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'	'ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 4. **The technical standards may specify the procedures to be applied by trade repositories in order to verify the completeness and correctness of the details reported to them under Article 4(1), where ESMA considers such procedures necessary to ensure compliance with this Regulation.** ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'

Explanation

ESMA should have the possibility to define procedures for trade repositories to verify the completeness and correctness of the data reported to them under Article 4(1) of the proposed regulation, if ESMA considers this necessary and appropriate. See paragraph 2.4 of this Opinion.

Amendment 14

Article 12(2)

'A trade repository shall collect and maintain the details of SFTs and shall ensure that the entities referred to in Article 81(3) of Regulation (EU) No 648/2012, the European Banking authority (EBA) and the European Insurance Occupational Pensions Authority (EIOPA) have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates.'	'A trade repository shall collect and maintain the details of SFTs and shall ensure that the entities referred to in Article 81(3) of Regulation (EU) No 648/2012**, including the ECB in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013,** the European Banking authority (EBA) and the European Insurance Occupational Pensions Authority (EIOPA) have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates.'

Explanation

Article 81(3) of Regulation (EU) No 648/2012 includes the 'relevant members of the ESCB'. While the ECB would be covered by this term, for the purposes of legal certainty, explicit reference should be made to the ECB's role within the Single Supervisory Mechanism (SSM).

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 15	
Article 12(3)	
'In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:	'In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:
(a) the frequency and the details of the aggregate positions referred to in paragraph 1 and the details of SFTs referred to in paragraph 2;	(a) the frequency and the details of the aggregate positions referred to in paragraph 1 and the details of SFTs referred to in paragraph 2;
(b) operational standards required in order to aggregate and compare data across repositories;	(b) operational standards required in order to **compile,** aggregate and compare data across repositories **in a fully automatic way**;
(c) the details of the information to which the entities referred to in paragraph 2 have access to.	(c) the details of the information to which the entities referred to in paragraph 2 have access**, taking into account the need to have access to complete, granular data in standardised formats**.
Those draft regulatory technical standards shall ensure that the information published under paragraph 1 is not capable of identifying a party to any SFT.	Those draft regulatory technical standards shall ensure that the information published under paragraph 1 is not capable of identifying a party to any SFT.
ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].	ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'

Explanation

In order to perform ESCB tasks and to monitor financial markets and financial activities, the ESCB needs to collect high quality statistical information. Therefore, the draft regulatory technical standards must ensure that the information provided by trade repositories to ESCB members is complete, granular, and accessible in a standardised format from all trade repositories. See paragraph 2.4 of this Opinion.

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 16	
Article 15	
'Chapter V	'Chapter V
Transparency of rehypothecation	Transparency of ~~rehypothecation~~ **reuse**
Article 15	Article 15
Rehypothecation of financial instruments received as collateral	~~Rehypothecation~~ **Reuse** of financial instruments received as collateral
1. Counterparties shall have the right to rehypothecation where at least all the following conditions are fulfilled:	1. Counterparties shall have the right to ~~rehypothecation~~ **reuse** where at least all the following conditions are fulfilled:
(a) the providing counterparty has been duly informed in writing by the receiving counterparty of the risks that may be involved in granting consent as referred to in point (b) in particular the potential risks in the event of the default of the receiving counterparty;	(a) the providing counterparty has been duly informed in writing by the receiving counterparty of the risks that may be involved in granting consent as referred to in point (b) in particular the potential risks in the event of the default of the receiving counterparty;
(b) the providing counterparty has granted its prior express consent as evidenced by the signature of the providing counterparty to a written agreement or an equivalent alternative mechanism.	(b) the providing counterparty has granted its prior express consent as evidenced by the signature of the providing counterparty to a written agreement, ~~or~~ **to** an equivalent alternative mechanism **or to a title transfer financial collateral arrangement as defined in Article 2(1)(b) of Directive 2002/47/EC**.
2. Counterparties shall exercise their right to rehypothecation where at least all the following conditions are fulfilled:	2. Counterparties shall exercise their right to ~~rehypothecation~~ **reuse** where at least all the following conditions are fulfilled:
(a) rehypothecation is undertaken in accordance with the terms specified in the written agreement referred to in point (b) of paragraph 1;	(a) ~~rehypothecation~~ **reuse** is undertaken in accordance with the terms specified in the written agreement referred to in point (b) of paragraph 1;
(b) the financial instruments received as collateral are transferred to an account opened in the name of the receiving counterparty.	(b) the financial instruments received as collateral are transferred to an account opened in the name of the receiving counterparty.
3. This Article is without prejudice to stricter sectoral legislation, in particular to Directive 2011/61/EU and 2009/65/EC.'	3. This Article is without prejudice to stricter sectoral legislation, in particular to Directive 2011/61/EU and 2009/65/EC.'

Explanation

This amendment seeks to ensure consistency with the introduction of the term 'reuse' to the proposed regulation. See Amendment 10 and paragraph 2.3 of the Opinion.

Amendment 17	
Article 17(2)	
'The competent authorities referred to in Article 16 and ESMA shall cooperate closely with the relevant members of the ESCB where relevant for the exercise of their duties, in particular in relation to Article 4.'	'The competent authorities referred to in Article 16 and ESMA shall cooperate closely with the relevant members of the ESCB, **including the ECB in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013,** where relevant for the exercise of their duties, in particular in relation to Article 4.'

Text proposed by the Commission	Amendments proposed by the ECB [1]

Explanation

Article 81(3) of Regulation (EU) No 648/2012 includes the 'relevant members of the ESCB'. While the ECB would be covered by this term, for the purposes of legal certainty, explicit reference should be made to the ECB's role within the SSM.

Amendment 18

Article 20(4)(d)

'Member States shall, in conformity with national law, confer on competent authorities the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1 of this Article:	'Member States shall, in conformity with national law, confer on competent authorities the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1 of this Article:
[…]	[…]
(d) withdrawal or suspension of the authorisation;'	(d) ~~withdrawal or~~ suspension of the authorisation **of counterparties, other than credit institutions authorised in accordance with Directive 2013/36/EU**; **(da) withdrawal of authorisation. This power shall be subject to the exclusive competence of the ECB to withdraw authorisations of credit institutions under Article 4(1)(a) of Council Regulation (EU) No 1024/2013;**'

Explanation

The ECB is exclusively competent to withdraw authorisations of credit institutions in accordance with Articles 4(1)(a) and 14(5) of Council Regulation (EU) No 1024/2013. Therefore, the proposed regulation must make clear that withdrawal of authorisation of credit institutions established in participating Member States is subject to the ECB's exclusive competence. Moreover, in order to ensure the proper functioning and integrity of the SSM, competent authorities should not be entrusted with the power to suspend the authorisation of credit institutions under the proposed regulation.

Amendment 19

Article 20(5)

'A breach of the rules laid down by Article 4 shall not affect the validity of the terms of a SFT or the possibility of the parties to enforce the terms of a SFT. A breach of the rules defined under Article 4 shall not give rise to compensation rights from a party to a SFT.'	'A breach of the rules laid down by Article 4 **or Article 15** shall not affect the validity of the terms of a SFT or the possibility of the parties to enforce the terms of a SFT. A breach of the rules defined under Article 4 shall not give rise to compensation rights from a party to a SFT.'

Explanation

In order to ensure that the contractual transparency requirements under the proposed regulation do not inadvertently create financial stability risks for collateral chains, it should be made clear that breaches of the transparency requirements under Article 15 will not affect the validity or enforceability of the SFT. See paragraph 2.3 of this Opinion.

[1] Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.